IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1383 OF 2006

Prabhodhankar Thakare
Co-op. Hsg. Societies Union Ltd. ... Petitioner

Vs.

The Maharashtra Housing and
Area Dev. Authority and Ors. ... Respondents

Mr. S.S. Pawar for Petitioner.

Mr. R.M. Sawant, Government Pleader with Mr. V. Phal, A.G.P. for Respondent No. 1.

Mr. V.B. Naik and P.A. Kabadi i/by Doijode & Associates for Respondent No. 5.

CORAM: F.I. REBELLO &
MRS.V.K.TAHILRAMANI,JJ.
DATE : 12th June, 2006

P.C.:

1. The Petitioner was the Federation of the societies. They have approached this court to challenge the allotment of land done in favour of Charkop Chetan Co.op. Hsg. Soc. Ltd. which is represented in this petition by its secretary.

2. A few facts may be noted as set out in the affidavit of Mr. Baburao Gaikawad, Estate Manager (W) of the Mumbai Housing and Area Development Board. It appears that the Petitioner was allotted the plot in question at the relevant time which was demarcated in the lay out as R.G. Plot by letter 17.12.1996 admeausirng 1692 sq. Mtrs. The total lease payable was Rs.3,51,936/-. The terms of payment were set out. Premium was payable within 30 days and it was possible to grant additional period of three months provided 25% amount is deposited

within the stipulated period on payment of interest at 16% p.a. The Petitioners have made two payments one of Rs.30,000/- on 20.1.1997 and another of Rs.10,000/- on 27.1.1999. Thereafter on 14.11.2000 the Petitioners informed the respondents to allot them a smaller plot of 200 to 300 sq. mtrs. where there was no reservation. It was also requested in respect of the reserved plot that the reservation be changed. By communication of 20.11.2000 the Petitioners requested that they be allotted another plot.

3. Chetan C.H.S.Ltd. hereinafter referred to as "Society" had been allotted plot in the same layout. The plot was affected by a ‘nala’ and was also coming within the C.R.Z. regulation. They made a request for alternative plot. The society had paid a sum of Rs.46,36,260/- for the plot. Considering the request of the society, the reservation of the plot was changed from R.G. to residential and the same came to be allotted to the society who had paid Rs.83.45,700/- on 28.10.2004. Thereafter, the lease agreement has been entered into on 14.3.2005 and possession handed over. This petition has been filed in the year 2006.

4. On behalf of the Petitioner, their learned counsel submits that they have made payments and in these circumstances, there could have been no allotment in favour of the society. It is also

sought to be pointed out that the reservation could not have been altered. For that purpose the reliance is placed in the judgement in the case of Dr. G.N. Khajuria and Ors. Vs. Delhi Development Authority and Ors. (1995) 5 S.C.C. 762. It is not necessary for us to advert to the facts of that case. Suffice it to say that in the instant case, the lay out is prepared by MHADA which itself is a planning authority. On account of difficulties faced by the society, they considered the societies regret and converted the plot from R.G. to residential. At the same time, the Petitioners herein have also been offered alternative plot for recreational purposes. In the judgment in Dr. Khajoria (supra) it is held that once the Development Plan is approved by the planning Authority, the same cannot be altered without following due process of law. In the instant case, the planning authority has merely in respect of the lay out altered the areas of reservation. Therefore, the judgement in the case of Dr. Khajoraia (supra) would not be applicable to the facts of the present case.

5. Apart from that in our opinion, it will be inequitable for us to exercise our extra ordinary jurisdiction to interfere with the allotment done in favour of the society. The society has paid the amount which is over Rs.83 lacs. and entered into the lease deed and they have taken possession. The

Petitioners have also been given an alternative plot for the purpose for which they wanted the plot. In these circumstances, in our opinion, this will not be a fit case to exercise our extra ordinary jurisdiction. Petition rejected.

(F.I.REBELLO, J.)

(MRS.V.K.TAHILRAMANI,J.)